STATE OF MICHIGAN

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

OFFICE OF FINANCIAL AND INSURANCE REGULATION

Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXX
Petitioner

v **File No. 122201-001**

Physicians Health Plan of Mid-Michigan
Respondent

Issued and entered
this 10th day of October 2011
by R. Kevin Clinton
Commissioner

ORDER

I. PROCEDURAL BACKGROUND

On July 5, 2011, XXXXX (Petitioner) filed a request for external review with the Commissioner of Financial and Insurance Regulation under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq*. The Petitioner has been a member of Physicians Health Plan of Mid-Michigan (PHP), a health maintenance organization since January 1, 2011. His health care benefits are defined in a PHP certificate of coverage and prescription drug rider.

The Commissioner notified PHP of the external review and requested the information used in making its adverse determination. PHP furnished information it used in making its final adverse determination on July 11, 2011. After a preliminary review of the material submitted, the Commissioner accepted the request for external review on July 12, 2011. PHP submitted additional information on July 19, 2011.

This case involves medical issues. Therefore, the matter was assigned to an independent review organization which submitted its analysis on July 26, 2011. (A copy of the complete report is being provided to the parties with this Order.)

II. FACTUAL BACKGROUND

The Petitioner is 49 years-old and has a history of chronic fatigue syndrome. He has been prescribed a variety of antiviral drugs such as Famciclovir, Acyclovir and Valcyclovir to

treat his condition. His preference is Famciclovir which he took for several years before he became a PHP member in January 2011. PHP denied coverage for Famciclovir. The Petitioner appealed the denial through PHP's internal grievance process and received a final adverse determination letter dated May 20, 2011.

III. ISSUE

Did Priority Health properly deny coverage for Petitioner's Famciclovir?

IV. ANALYSIS

Petitioner's Argument

The Petitioner states he has tried other antiviral medications, such as Acyclovir and Valcyclovir but that he experiences side effects. He has also taken Famciclovir for the past three years and it has successfully treated his condition without any side effects. He indicates that he realizes the FDA does not approve Famciclovir for the treatment of chronic fatigue syndrome but contends there are peer reviewed studies that demonstrate Famciclovir is effective in treating his condition.

Petitioner requests that PHP provide coverage for Famciclovir and wants PHP to reimburse him for the Famciclovir prescriptions that he filled after he received PHP's final adverse determination. Petitioner also requests that PHP pay him $60.00 for the cost of two doctor visits and $20.00 as reimbursement for the two reams of paper that he used to defend himself against PHP's denial.

Respondent's Argument

In its May 20, 2011, final adverse determination, PHP wrote:

> . . . The original decision to deny your request was upheld because it is considered unproven for the treatment of chronic fatigue. Famciclovir is not indicated for the treatment of chronic fatigue by the Food and Drug Administration (FDA- agency responsible for assuring the safety, efficacy, and security of drugs). PHPMM considers medications that are not FDA indicated to be unproven and excluded from coverage. . . .

Commissioner's Review

The prescription drug rider excludes coverage for "Experimental, Investigational or Unproven Services and medications; medications used for experimental indications and/or dosage regimens determined by us to be experimental, investigational or unproven. . . . "

To determine whether the requested medication is unproven in the treatment of the Petitioner's condition, the Commissioner requested analysis by an independent review organization (IRO) as required by section 11(6) of the Patient's Right to Independent Review Act, MCL 550.1911(6). The review was performed by a physician who is board certified in internal medicine, has been in active practice for more than 18 years, and is familiar with the medical management of patients with the Petitioner's condition. The IRO report included the following analysis:

> . . . [C]hronic fatigue syndrome has been treated with a number of medical therapies, including Acyclovir, intravenous immunoglobulin [*sic*], Nystatin and low dose Hydrocortisone/Fludrocortisone. However, . . . there is no accepted scientific data documenting improvement in the symptoms of patients with chronic fatigue syndrome with these therapies. . . . [P]atients with chronic fatigue syndrome have benefited from a comprehensive multidisciplinary intervention, including optimal medical management, treatment of any ongoing affective or anxiety disorder pharmacologically and implementation of a cognitive-behavioral treatment program. . . . [T]he rationale for the use of antiviral medications, such as Famciclovir, for treatment of chronic fatigue syndrome is the effectiveness of these medications in treatment of disorders resembling this diagnosis, such as the Epstein-Barr virus. However, . . . there is no indication in the literature for the treatment of chronic fatigue syndrome with antiviral medications. . . . Famciclovir is not FDA approved for treatment of chronic fatigue syndrome.

The reviewer concluded that "Famciclovir 500mg is experimental/investigational/ unproven for treatment of the member's condition." [1]

The Commissioner is not required in all instances to accept the IRO's recommendation. However, the IRO recommendation is afforded deference by the Commissioner. In a decision to uphold or reverse an adverse determination, the Commissioner must cite "the principal reason or reasons why the Commissioner did not follow the assigned independent review organization's recommendation." MCL 550.1911(16)(b). The IRO's analysis is based on extensive experience, expertise and professional judgment. The Commissioner can discern no reason why the IRO's recommendation should be rejected in the present case.

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[1] The Petitioner's physician, Dr. XXXXX, indicated in a June 27, 2011, letter that the Petitioner saw him as a new patient in March 2010 with a diagnosis of both chronic fatigue syndrome and Epstein-Barr virus. While no other documents submitted for this appeal indicate that the Petitioner has Epstein-Barr, the Commissioner requested the IRO address the use of Famciclovir as an Epstein–Barr treatment. The IRO reviewer supplemented the IRO report with the conclusion that "the antiviral agent Famciclovir is not medically necessary for treatment of Epstein-Barr virus in this member's case."

The Commissioner concludes that Famciclovir is unproven for the treatment of the Petitioner's condition. PHP's denial of coverage was the correct disposition of the Petitioner's claim. Given that the claim denial was correct, the Commissioner will not require PHP to provide the additional relief (reimbursement for doctor visits and paper supplies) requested by the Petitioner.

V. ORDER

The Commissioner upholds Physicians Health Plan of Mid-Michigan's May 20, 2011, final adverse determination. PHP is not required to provide coverage for Famciclovir prescribed for the Petitioner.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than 60 days from the date of this Order in the circuit court for the county where the covered person resides or in the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.